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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Art Unit: 1625

ATTACHMENT TO ADVISORY

After final response filed by applicants dated Jan. 18, 2011 has been fully considered but the arguments are not persuasive for the following reason:

1. Two references are attached for applicants' convenience. The Cecil medical textbook clearly defines that "...the term [infarction] used to describe irreversible cellular injury and necrosis occurring as a consequence of prolonged ischemia" (p.247).

The Wikipedia from internet providing definition of brain ischemia including cerebral infarction.

2. The references provided by applicants are supportive of the 112 rejection because not only all the references are limited to angiogenic growth in "reversible" dysfunctional tissue but also explicitly on "impaired myocardial dysfunction" of post-ischemic event, see Gowda et al. p.350 left col. description for "viable myocytes". In other words all the references is supporting that angiogenic agent can improve dysfunctional ischemic tissue not dead tissue i.e. ischemic heart disease, ischemic brain disease not myocardial infarct or cerebral infarct.

3. The argument with respect to 103 rejection does not obviate the factual evidence. Please note that a compound cannot be separated from its inherent property, thus, it was inherent utility for the claimed compound since the vasodilators of Fujioka et al. '642 also have angiogenic property. The Sumi reference merely provided evidence flow with the inherent property known for the "class" of compounds disclosed by Fujioka '642.

The instant scope of compounds is more limited than Fujioka '642 (compare claim 1 to instant claim 1) but one species identical was claimed (compare claim 13 to instant claim 2). Therefore, the 103(a) rejection is a species/genus relationship. If applicants are arguing that the instant smaller genus is unobvious because only this subgenus has angiogenic property not the whole vasodilating genus as the prior art, then, factual evidence supporting such allegation should be presented. Please note that motivation to use "some" compounds in an active genus is well within the teaching, motivation and suggestion of the very reference i.e. Fujioka. See col. 3, line 15-20 increasing coronary blood flow which is treating ischemic heart disease.

4. The same basis of subgenus being prima facie obvious over genus over the claims of '642 as delineated supra in section 3 is also applicable for the obviousness type double patenting rejection. Applicants must provide an acceptable terminal disclaimer or obviate the obviousness established by factual evidence.

/Celia Chang/

Primary Examiner, Art Unit 1625